

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: TUESDAY
DATE: OCTOBER 27, 2015
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

COURT'S ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [15-13701](#)-A-13 KEVIN GERHARDT
MET-1
BANK OF THE WEST/MV
GABRIEL WADDELL/Atty. for dbt.
MARY TANG/Atty. for mv.
NON-OPPOSITION

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-29-15 [[15](#)]

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

Subject: 2002 Monaco Diplomat M-38PST Motor Home

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

STAY RELIEF

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). Further, even though the court has ruled that the case will be converted (an order has not yet been entered converting this case), the debtor has affirmed that he intends to surrender the property. The property is therefore not necessary to the debtor's reorganization in chapter 13 after the order converting the case is entered.

In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Bank of the West's motion for relief from stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2002 Monaco Diplomat M-38PST Motor Home, as to all parties in interest. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. All requests for attorney's fees or other costs for bringing this motion are denied.

2. [15-13220](#)-A-7 DARREN/LYNETTE VANVRANKEN MOTION FOR RELIEF FROM
KAZ-1 AUTOMATIC STAY
NATIONSTAR MORTGAGE LLC/MV 9-28-15 [[14](#)]
JEFFREY ROWE/Atty. for dbt.
KRISTIN ZILBERSTEIN/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

3. [14-13225](#)-A-7 CARMEN RAMIREZ MOTION TO PAY CLAIM FOR
JES-2 COMPENSATION LESS THAN
JAMES SALVEN/MV \$1,000.00
 8-12-15 [[62](#)]
SUSAN HEMB/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Approved in part, disapproved in part

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days before the hearing on the application. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

The trustee has filed this application on behalf of a real estate broker. The trustee requests compensation for Amy Strausser. However, the employment order specifically employs only London Properties, Ltd. Order Employing Broker, ECF No. 35. Thus, the court will disapprove the application in part as to Amy Strausser. But the court will deem the application as having been brought by London properties, Ltd., and the application will be approved as to London Properties, Ltd.

Section 330(a) of the Bankruptcy Code authorizes “reasonable compensation for actual, necessary services” rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and “reimbursement for actual, necessary expenses.” 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

CIVIL MINUTE ORDER

London Properties, Ltd.'s application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

- ## Final Ruling

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days

before the hearing on the application. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

In this Chapter 7 case, Janzen, Tamberi & Wong, accountant for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$931.00 and reimbursement of expenses in the amount of \$16.11.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Janzen, Tamberi & Wong's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$931.00 and reimbursement of expenses in the amount of \$16.11.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

5. [15-13528](#)-A-7 STEVEN GONZALO AND MOTION FOR RELIEF FROM
APN-1 MERCEDES MORA AUTOMATIC STAY
WELLS FARGO BANK, N.A./MV 9-28-15 [[9](#)]
LAYNE HAYDEN/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Subject: 2013 Dodge Ram Truck

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

STAY RELIEF

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Wells Fargo Bank, N.A.'s motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2013 Dodge Ram Truck, as to all parties in interest. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

6. [15-11835](#)-A-7 JAMES/JAMIE CANNON
KDG-2
RANDELL PARKER/MV

CONTINUED MOTION TO EMPLOY
PORTFOLIO PROPERTY MANAGEMENT
AS PROPERTY MANAGER
8-27-15 [[101](#)]

ROBERT WILLIAMS/Atty. for dbt.
LISA HOLDER/Atty. for mv.

No tentative ruling.

7. [15-13349](#)-A-7 ALEJANDRO/CONCEPCION
LLONTOP
ALEJANDRO LLONTOP/MV
VINCENT QUIGG/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT
10-9-15 [[19](#)]

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

Disposition: Continued to November 18, 2015, at 9:00 a.m.; no later than 14 days before the continued hearing date, movant will file a supplemental proof of service and a notice of continued hearing using the notice procedure under LBR 9014-(f) (2)

Order: Civil minute order

Business Description: Llontop Custom Cabinetry, a sole proprietorship

INSUFFICIENT NOTICE

Rule 6007(a) expressly requires a trustee or debtor in possession to provide notice of a proposed abandonment to all creditors, indenture trustees, and any committees. But Rule 6007(b) does not specifically state who must receive notice of a motion to abandon property of the estate. See Fed. R. Bankr. P. 6007(a)-(b). But a motion under Rule 6007(b) seeks an order to compel the trustee to abandon property of the estate, the same action that is described in Rule 6007(a) and for which notice to creditors is required.

Because a motion under Rule 6007(b) requests a type of relief that requires notice to all creditors and parties in interest under Rule 6007(a), the same notice required by Rule 6007(a) should be required when a party in interest seeks to compel the trustee to take such an action under Rule 6007(b). See *Sierra Switchboard Co. v. Westinghouse Elec. Corp.*, 789 F.2d 705, 709-10 (9th Cir. 1986) (finding that a trustee's abandonment would not be effective without notice to creditors); *Hie of Effingham, LLC v. WBCMT 2007-C33 Mid America Lodging, LLC (In re Hie of Effingham, LLC)*, 490 B.R. 800, 807-08 (Bankr. S.D. Ill. 2013) (concluding that Rule 6007(b) incorporates service requirements of Rule 6007(a)); *In re Jandous Elec. Constr. Corp.*, 96 B.R. 462, 464-65 (Bankr. S.D.N.Y. 1989) (finding that parties in interest requesting abandonment of estate property for which a hearing is contemplated must provide notice to the parties listed in Rule 6007(a)).

Accordingly, the court requires all creditors and parties in interest described in Rule 6007(a), and the trustee pursuant to Rule 9014(a), to be provided notice of a motion requesting abandonment under Rule

6007(b). In this case, all creditors and parties in interest described in Rule 6007(a) and Rule 9014(a) have not received notice of the motion. The court cannot grant the motion at this time due to insufficient notice of the motion.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master address list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master address list should indicate a date near in time to the date of service of the notice. In addition, governmental creditors must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. See Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

INSUFFICIENT NOTICE PERIOD

The motion requires written opposition 14 days before the hearing. This is an attempt to use LBR 9014-1(f)(1)'s notice procedure and period. But the motion was served and filed on October 9, 2015, which is less than 28 days prior to the hearing. The motion was thus filed about 10 days late.

Because less than 28 days' notice of the hearing was given to all creditors and parties in interest, the court will deem the motion as having been noticed under Local Bankruptcy Rule 9014-1(f)(2). See LBR 9014-1(f)(1) (when written opposition is required no later than 14 days before the hearing, then at least 28 days' notice of the motion must be given), (f)(2) (when fewer than 28 days' notice is required, no written opposition shall be required and the motion must be noticed at least 14 days before the hearing).

VIOLATION OF LOCAL RULES

LBR 9014-1(d)(3) provides that "[e]very motion shall be accompanied by a separate notice of hearing The notice of hearing was not filed separately.

LBR 9014-1(c) requires the use of docket control numbers. None were used. The guidelines for the preparation of documents also have not been followed for this matter. In the future, the attorney for the debtors shall comply with the court's local rules and guidelines, or the court may issue sanctions against the attorney.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the motion is continued to November 18, 2015, at 9:00 a.m. No later than 14 days before the continued hearing date, movant will file a supplemental proof of service and a notice of continued hearing using the notice procedure under LBR 9014-(f)(2). In addition, the movant will file all supplemental documents in compliance with the court's local rules and guidelines for document preparation.

8. [14-14164](#)-A-7 ADOLFO ISARRARAS AND OBJECTION TO DEBTOR'S CLAIM OF
JES-1 HERIBERTA VASQUEZ EXEMPTIONS
JAMES SALVEN/MV 9-21-15 [[32](#)]
ALBERT GARCIA/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The debtors having filed Amended Schedule C, the objection is overruled as moot.

9. [12-13067](#)-A-7 MICHAEL JOHANNES MOTION FOR COMPENSATION FOR
THA-7 THOMAS H. ARMSTRONG, TRUSTEES
ATTORNEY(S)
9-25-15 [[94](#)]

JERRY LOWE/Atty. for dbt.

Tentative Ruling

Application: Allowance of First and Final Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Approved

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days before the hearing on the application. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

In this Chapter 7 case, Thomas H. Armstrong, attorney for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$15,652.35 and reimbursement of expenses in the amount of \$347.65.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

UNITED STATES TRUSTEE GUIDELINES

In addition to the invoice detailing time expended chronologically, future fee applications should be accompanied by an invoice that breaks time by project categories, e.g. asset analysis and recovery, case administration, etc. U.S. Trustee Program Guidelines, Guideline (b) (4) (i).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Thomas H. Armstrong's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$15,652.35 and reimbursement of expenses in the amount of \$347.65.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court.

10. [15-13591](#)-A-7 RUBEN GRANDE
MDZ-1
VRM/MV
MICHAEL ZEFF/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-24-15 [[16](#)]

Tentative Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); written opposition filed

Disposition: Granted

Order: Prepared by moving party

Subject: 934 Privilege Drive, Lemoore, CA

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

STAY RELIEF FOR CAUSE UNDER § 362(d) (1)

Section 362(d)(1) authorizes stay relief for cause shown. Cause includes the debtor's pre-petition loss of real property by way of foreclosure.

In this case, the debtor's bankruptcy was filed September 11, 2015. The Trustee's Deed Upon Sale was recorded on December 12, 2014.

As a result, the debtor's interest in the property was extinguished prior to the petition date by a foreclosure sale. The motion will be granted. The movant may take such actions as are authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages) to obtain possession of the subject property.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

VRM (Vendor Resource Management) has filed a motion for relief from the automatic stay. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 934 Privilege Drive, Lemoore, CA, as to all parties in interest. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.